

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: FLORIDA

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL
ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

The Life Prolonging Procedure Act, Chapter 765, Florida Statutes (F.S.) recognizes the right of a competent adult to make an oral or written declaration instructing his physician to provide, withhold, or withdraw ^{PAT} life-prolonging procedures; or to designate another to make the treatment decision for him if he is suffering from a terminal condition. A written declaration must be signed by the declarant in the presence of two subscribing witnesses, one of whom is neither a spouse or blood relative. If the declarant is physically unable to sign the written declaration, his declaration may be given orally, in which event one of the witnesses must subscribe the declarant's signature in the declarant's presence and at the declarant's direction. It is the responsibility of the declarant to provide for notification to his attending physician that the declaration has been made. If the declarant is mentally or physically incapable, any other person may notify the physician of the existence of the declaration. A declaration may be revoked at any time by the declarant. ^{HCFA 1-28-92}

The Health Care Surrogate Act, Chapter 745, F.S., provides that any competent adult may designate a person to serve as a health care surrogate to make health care decisions for him and to provide informed consent if he is incapable. A person designated a health care surrogate shall be notified of such designation and shall indicate his consent by providing a signed statement accepting the designation. The designation must be in writing and signed by the person in the presence of two attesting witnesses, one of whom must not be his spouse, a blood relative, an heir to his estate, or responsible for paying his health care costs. An individual may not serve as a health care surrogate if he is (1) the treating health care provider or an employee or relative of the treating health care provider; (2) the operator or an employee of the health care facility in which the patient resides or a relative of such operator or employee; (3) the guardian of the property of the person, but not the guardian of the person. The health care facility must ascertain at the time of admission if the individual has designated a health care surrogate.

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REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE (Continued)

Durable Power of Attorney, Chapter 709.08 F.S., provides that an individual may create a durable power of attorney designating a person as his attorney in fact by executing a power of attorney. The power of attorney may include the authority of the attorney to arrange for and consent to medical, therapeutical, and surgical procedures. Such power of attorney shall be in writing, shall state the relationship of the parties, and shall include the words, "This durable power of attorney shall not be affected by disability of the principal except as provided by statute," or similar words clearly showing the intent of the principal that the power conferred on the attorney shall be exercisable from the date specified in the instrument, notwithstanding a later disability or incapacity of the principal, unless otherwise provided by statute.

Court Appointed Guardianship, Chapter 744, F.S., establishes a system that permits incapacitated persons to participate as fully as possible in all decisions affecting them. It assists such person in meeting the essential requirement for their physical health and safety, in protecting their rights, in managing their financial resources, and in developing or regaining their abilities to the maximum extent possible. It accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in his own behalf.

Constitutional Right of Privacy -- In Re: Guardianship of Estelle Browing, Florida Supreme Court, 1990 upheld an individual's right to privacy to decide to accept or reject medical care, whether designated in writing or orally.

The State requires providers to provide the attached "Statement of Advance Directive or Living Wills" to adults who are being admitted to health care facilities. Providers may also provide the attached "Additional Information on Advance Directives."

State law does not allow for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

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STATEMENT OF ADVANCED DIRECTIVE OR LIVING WILLS

The following is provided to inform you about Florida law regarding "advanced directives" or "living wills."

Under Florida law (see note below), every adult has the right to make certain decisions concerning his or her medical treatment. The law also allows for your rights and personal wishes to be respected even if you are too sick to make decisions yourself.

You have the right, under certain conditions, to decide whether to accept or reject medical treatment, including whether to continue medical treatment and other procedures that would prolong your life artificially.

These rights may be spelled out by you in a "living will," containing your personal directions about life-prolonging treatment in the case of serious illness that could cause death.

You may also designate another person, or surrogate, who may make decisions for you if you become mentally or physically unable to do so. This surrogate may function on your behalf for a brief time or longer, for a life-threatening or a non-life-threatening illness.

Any limits to the power of the surrogate in making decisions for you should be clearly expressed.

Your health care provider will furnish you written information about its policy regarding advanced directives.

NOTE: The legal basis for these rights can be found in the Florida Statutes: Life-Prolonging Procedure Act, Chapter 765; Health Care Surrogate Act, Chapter 745; Durable Power of-Attorney Section 709.08; and Court Appointed Guardianship, Chapter 744; and in the Florida Supreme Court decision on the constitutional right of privacy, Guardianship of Estelle Browning, 1990.

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ADDITIONAL INFORMATION ON ADVANCE DIRECTIVES

Accident or illness can take away a person's ability to make health care decisions. But decisions still have to be made. If you cannot do so, someone else will; and sometimes this causes the burden, delay and expense of court proceedings. You should consider whether you want to take steps now to control these decisions so that they will reflect your own wishes.

LIVING WILLS

A Living Will (or Declaration) is a statement of your wishes regarding the use of life-prolonging treatment if you are in a terminal condition. (A "Living Will" is different from the Will which disposes of your property after your death.)

Generally, a "Living Will" is a statement that you desire to be allowed to die and not be kept alive by medical treatment when your doctors conclude that you are no longer able to decide matters for yourself and that your condition is terminal. If you would not want to be kept alive by use of a feeding tube or other artificial means of providing food and water, specifically state this.

SURROGATE DESIGNATION

If you are too sick to make decisions, close family members or a close friend usually will decide with the doctor and nurses what is best for you. And most of the time that works. But sometimes everyone doesn't agree about what to do, even if you have made a Living Will. One way to help ensure that your wishes will be honored is to name someone you trust who will make medical decisions for you. You may name this person in a Living Will (or Declaration), in which case such person makes only those medical decisions related to serious illness that could cause death.

If you want to name someone you trust to make all other medical decisions for you when you are too sick to do so yourself, you may wish to put this in writing. Remember, if you want this person to also make decisions about the use of machines and medical treatment that might delay your death when you are hopelessly ill, name the same person in your Living Will.

It is advisable to name a replacement in case the person you have chosen to make decisions for you becomes unable or unwilling to do so.

If you decide to make a Living Will or other advance directive, it is recommended that you give a copy to your doctor, your closest relative or friend and any hospital, nursing home or other facility where you are receiving treatment or care. If you change your mind, make sure that you so advise all those to whom you have given copies.

A Living Will in no way affects life insurance. Also, it cannot be required as a condition for being insured for, or receiving, health care services. Any medical treatment that is used for the purpose of providing comfort care or to alleviate pain will be continued.

A summary like this cannot answer all of your questions or cover every circumstance. If you have questions about your particular legal situation, please talk to a lawyer. Also talk to your health care provider about the medical issues. Let those who will be caring for you know what you have decided.